

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 166 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH-TAX

Versus

KAUSHTUBH SETTLEMENT

Appearance:

MR Mihir Joshi for Petitioner
NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 16/10/98

ORAL JUDGEMENT

The Income Tax Appellate Tribunal has suggested the following question under Section 27 (1) of the Wealth Tax Act, 1957 for the opinion of this Court :

- "1. Whether, the Appellate Tribunal is right in law and on facts in holding that as the net wealth of assessee was well below the exemption limit, the Wealth-tax officer was not justified in applying the provisions of sec.21 (4) of the Wealth-tax Act and taxing the trust at higher of the two rates prescribed under Sec.21(4) of the

2. A similar question came up for consideration before this court in WTR No.47/93 (CWT Vs. Rekha Dhanesh Trust). By our decision dated 29.1.1998, we have answered the question in the affirmative i.e. in favour of the assessee and against Revenue. It was held that since no wealth tax was payable at all by the representative assessee as the net wealth admittedly fell within the exemption limit referred to in the proviso of Schedule I, Part I, the question of applying higher rate under clause (b) of Section 21 (4) did not at all arise. As per the provisions of Section 3 read with Schedule I created thereunder, in the case of an individual, wealth tax was not payable where the net wealth did not exceed the limit prescribed therein. It was held that the words "no wealth tax shall be payable" in the proviso of Schedule I, Part I, clearly indicate that an individual was exempted from wealth tax where his net wealth did not exceed the prescribed exemption limit. Therefore, since there was no liability to pay tax where the wealth was within the exemption limit no tax could be levied or recovered thereon. In the present case, admittedly the net wealth of the assessee did not exceed the prescribed exemption limit. Therefore following the ratio of the decision in Rekha Dhanesh Trust Case (Supra), we answer the question referred to this court in the affirmative in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani, J)

(A.R.Dave, J)

jitu